

COMMISSIONERS APPROVAL

GRANDSTAFF *cy*

ROKOSCH

THOMPSON *at*

CHILCOTT *ge*

DRISCOLL *ld*

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner Carlotta
Grandstaff, Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner
Greg Chilcott and Commissioner Kathleen Driscoll

Date.....May 27, 2008

Minutes.....Beth Perkins

► The Board met for the following administrative matters:

- Approval of April 29th minutes: **Commissioner Rokosch made a motion to approve April 29th minutes. Commissioner Driscoll seconded the motion. All voted 'aye'.**
- Decision on Farmers Market storage shed: **The Board decided to continue until more details can be provided. Commissioner Chilcott made a motion to continue until the next administrative meeting. Commissioner Rokosch seconded the motion. All voted 'aye'.**
- New Airport Hangar Lease approval for Site #374: **Commissioner Chilcott made a motion to approve the new Airport Hangar Lease for Site #374. Commissioner Rokosch seconded the motion. All voted 'aye'.**

► The Board met for a public hearing on the Morado Mountain Estates Major Subdivision variance request continued from May 6th and also the Sandhill Ridge Major Subdivision variance request continued from May 8th. Present were Civil Counsel Karen Mahar, County Attorney George Corn, Planner Renee Lemon and several citizens.

Commissioner Grandstaff called the meeting to order.

Renee recapped the voting on the variance criteria by the Commissioners from the previous meeting. She stated due to ties on three of the criteria there was no conclusion on the variance without Commissioner Thompson's vote.

County Attorney George Corn stated there is no need to go through the variance criteria again. The logical conclusion is to have Commissioner Thompson vote.

Commissioner Thompson stated he did review the material submitted and is fully aware of everything that has been involved. He reviewed the emails submitted for public comment and is ready to vote.

Commissioner Driscoll stated there is a numerous amount of information that has been submitted since May 6th stemming from questions directed to Mr. Ohnstad.

Renee stated it is not new information but rather clarification of information already entered into the record.

Commissioner Rokosch made a motion to review the new information and re-vote on the variance criteria. Commissioner Driscoll seconded the motion.

Commissioner Chilcott requested clarification as to why a re-vote. Commissioner Grandstaff replied it is in light of answers received from Road & Bridge Supervisor David Ohnstad regarding the road costs.

Attorney Bill VanCanagan stated the information in response to the questions asked of Mr. Ohnstad by Commissioners Rokosch and Driscoll is not new information. He stated he objects to a re-vote. He researched all of the additional information provided and found it had been discussed in the previous meeting.

George Corn replied it is not new information; However, it is legal for the Board to change its vote since it is not complete.

Commissioner Grandstaff requested the vote. **Commissioner Grandstaff, Commissioner Rokosch, and Commissioner Driscoll voted 'aye'. Commissioner Thompson and Commissioner Chilcott voted 'nay'.** Based on a 3-2 vote, the BCC decided to re-vote on the variance criteria.

Commissioner Driscoll stated it is an issue of clarification even though it's not new information. She stated that Bill VanCanagan stated the decision on the Remington Ridge Subdivision variance set precedence.

Bill VanCanagan stated that it did set precedence.

Joslin Monahan stated that with the Remington Ridge variance request, Hidden Valley Road North had a substandard, 50-foot wide easement. The question was whether or not there needed to be a 60-foot wide easement. There was also question as to whether the road was private or county. The findings under Variance Review Criterion 2, which were adopted by the Commissioners, found that it was a unique condition. The Commissioners found that the not knowing the type of road was a unique condition. Similar to that, we

have a 50-foot right of way for Eight Mile Creek Road with the remaining 10 feet being difficult to obtain due to private property. There are questions as to new construction and easement width. This is a unique problem because we are dealing with private property and eminent domain that applies to one road that is the primary access for certain developers. The precedent that was set with Remington Ridge is that a legal issue can serve as Criterion 2.

Commissioner Driscoll asked if the Board approves this variance, will it set precedence for future improvements required for other subdivisions. There are approximately 800 lots coming in the future.

Joslin replied that what improvements would happen in this circumstance would make it a different case. Now it is not a matter that we have a road in the current condition. The improvements start from here and they move forward. You have Eight Mile Creek Road now with the improvements that we are going to make. What kind of subdivisions are you talking about? Are they over 20 lots?

Commissioner Driscoll stated if all the developers off Eight Mile Creek Road decided to propose subdivisions with less than 20 lots, the pro rata generated would be less. If the Board approves the variance, everyone gets the minimal amount and the Board is not able to create a pot of pro rata funds to improve the road to what it should be.

Joslin stated that what happened in Remington applies to Criterion 2 for this variance. You might have different findings for the other criteria because of the improvements we are proposing

Driscoll asked if they would be coming back and asking for the same variances with other subdivisions.

Bill VanCanagan stated it is a valid point. With other public health and safety issues or public cost issues, each case will stand on its own. He stated he would not come back and argue this for any other subdivision review. The conclusion for Criteria 2 for Remington Ridge applies here.

Commissioner Rokosch stated the variance granted for Remington Ridge was based on legal documentation for the 60 foot easement. It is quite different from the case here.

Commissioner Grandstaff reviewed the information submitted by David Ohnstad and the applicant's engineer. A safety review performed by MDOT in the project scoping for the Eastside Highway roundabout noted that 90% of the accidents that occurred (23 accidents in a 3 year period) on Eastside Highway were on the curve related to curve design and access issues. Ten years of traffic crash data from MDOT were also reviewed. There seems to be a problem with the curve and the 50 foot easement. She asked about the traffic accident data and the problems with realigning the curves on Eight Mile Creek Road within the current easement.

Commissioner Rokosch stated he agrees and there is a concern with that statement for public safety. He believes the granting of this variance would be detrimental to public safety. He would like to recall the testimony about the importance of separating roads from the pedestrian paths.

Commissioner Grandstaff read the response from David Ohnstad regarding the pathway not being safe within a 50 foot easement. Separated pathways require substantially more right of way.

Matt Ulberg stated we have to be careful discussing the safety review because the curve that is discussed is not within the scope of improvements that are proposed for Morado Mountain Estates. This is a safety review for the alternative analysis for the intersection of Eastside Highway and Eight Mile Creek Road. It has nothing to do with our project. The 90% traffic accident statistic is on the intersection of Eastside Highway and Eight Mile Creek Road. The accident information obtained for Eight Mile Creek Road cannot be released due to the rules of MDOT. Matt stated he cannot give that information out due to legal obligations and privacy. He stated the curve at Eastside Highway is not a good situation. The project was not started due to a safety issue, but it began as a bridge replacement project. They are looking at improving through the intersection and a pathway on the southside of the road. The State is not focusing on this intersection because of safety issues. He did hear the Commissioners ask about pedestrian and bicycle safety. He stated MDOT did not find any accidents on the road involving pedestrians or bicycles. Matt stated a 60 foot right of way is not adequate to accommodate pedestrian facilities in many instances. He gave examples of areas in Florence. It depends on the standard you are going to hold yourself to. It would be better to have more right of way on the side of the pedestrian trail. Can you do it within 30 feet on each side on the road with the road being centered? Can we accommodate a pathway with every right of way? He stated he does not believe so. He stated the Board is taking the right information for infrastructure planning. In regard to this variance request, he does not know if it is completely relevant.

Commissioner Rokosch pointed out that with this variance request, the developer is requesting that they not be responsible for the Eastside Highway and Eight Mile Creek Road intersection. They are asking that improvements start 500 feet north of the intersection. They are hoping the State will address the intersection. He stated the Board also has a request by Glen Cameron from MDOT to start considering mitigation from developers for the impacts on the State infrastructure. It basically lets them off the hook for addressing that intersection and then passes on the cost. It seems inappropriate under these criteria from both the public safety aspects as well as general welfare. In regards to the pedestrian potential, the 60 foot easement is questionable given what has been heard regarding a 50 foot easement being totally inadequate.

Commissioner Chilcott stated we are talking about adverse impacts on public health and safety and general welfare. This proposal is for improved roads and geometric design, increased life of the road, and a clear improvement of level of safety along the Eight Mile Creek Road. We have asked if there would be an adverse impact on the safety. This

proposal is the antithesis of an adverse impact on safety on that road. That is the question. We can make it safer by reducing the speed limit to 15 mph. There is no limit to what we can do to make it absolutely safe, but it is probably impossible. This is an improvement to the safety on Eight Mile Creek Road.

Commissioner Driscoll asked Matt about the ADT (average daily trips) discussed by MDOT. Matt replied the variance request has nothing to do with the capacity of the State system. They do not address the traffic capacity with their analysis. If they were to turn the intersection of Eastside Highway and Eight Mile Creek Road into a four way stop, it would be a level of service "F". At that time, they would signalize it. They are not discussing it at this time. They are proposing the round-about to address the traffic on Eastside Highway. He discussed the level of service on Eastside Highway as possibly being classified as level "E". He has been out on the site several times in the past week. It operates on a high level of service during peak hours. The peak hour can be a very high volume. Eastside Highway is not carrying 20,000 vehicles per hour. The ADT numbers he has are in the 7,000 range. The 20,000 range must be at the light in Florence due to higher commercial traffic volume.

Commissioner Grandstaff stated we are being told two conflicting things. She requested Matt to forget Eastside Highway and focus on Eight Mile Creek Road. MDOT is saying to take into consideration Eastside Highway. She stated they have to take into account the entire road network.

Matt replied that 58 lots are not going to compromise the function of Eastside Highway. Even 100 lots is not going to compromise Eastside Highway. MDOT has a transportation system impact analysis process. If you are not generating 100 trips during peak hour, MDOT does not want to hear about it. The combined subdivisions do not generate 100 trips during the peak hour. As long as you are permitted, they do not require a transportation system impact analysis. By MDOT guidelines, it would not require an impact statement. The county needs to come up with a way to account for that in the future. There needs to be interagency cooperation with the County and MDOT. It needs to be relevant, proportionate and fair. To say a subdivision, no matter how many lots, is responsible for improving the level of service of a state transportation system is not relevant, proportionate and fair. To say all people have to share in the cost as they come on, is relevant, proportionate and fair.

Jocelyn stated she would like to follow up with what Matt said and refocus the discussion. We are talking about a variance request that the road department has determined to be a safe solution for a road in bad disrepair. Whatever else may be the case in the next 10 to 20 years in Missoula County and Ravalli County that does or does not implicate Eastside Highway is not for this applicant to deal with. It is far, far beyond the scope of regulations. If Missoula County and Ravalli County want to come up with a better way to share traffic improvements on this road, it is still not this applicant's problem. Although she can understand broad, bold concerns like that, the possibilities of 15 years "down the road", are not an issue today.

Commissioner Driscoll stated these projects are happening now, so this is not something that is 25 years down the line. This is what we are looking at right now.

Commissioner Grandstaff outlined the variance criteria.

1. No Adverse Impacts on Public Health, Safety, or General Welfare to injury to adjoining landowners.

Commissioner Thompson and Commissioner Chilcott agreed. Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll disagreed.

2. The reasons for the variance are unique to the property.

Commissioner Driscoll stated she believes it is unique because of the fact of two subdivisions are coming in at the same time.

Commissioner Chilcott stated his comments are the same as in the last meeting.

Commissioner Rokosch commented on Commissioner Driscoll's reasoning of two subdivisions being presented simultaneously. The variance criteria two reads the condition of which their request for the variance is based, is unique to the property. The fact there are two or however many is not the question here. The criterion is that the conditions are unique to this specific property. Pulling the simultaneous request aside, there is nothing unique to this particular subdivision that would stand apart from any other subdivision.

Commissioner Driscoll replied that while she understands Commissioner Rokosch's point, she is looking at the big picture with detail in mind. The big picture is that these two subdividers have worked together. She stated she is taking Eastside Highway and Eight Mile Creek Road within the big picture and sticking with her decision that the two together make it unique.

Commissioner Chilcott stated he finds something unique in this debate. During the discussion on criterion one, all the cumulative impacts were discussed regarding these subdivisions and other subdivisions. He is now hearing that this is not unique. We have to jump on one horse or the other in this race.

Commissioner Rokosch stated that in the future he can see the County getting another simultaneous request or maybe three at the same time so this case is not unique.

Commissioner Chilcott stated the Eight Mile area has some unique conditions.

Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll agreed. Commissioner Grandstaff and Commissioner Rokosch disagreed.

3. Physical conditions such as topography or parcel shapes prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owners.

All Commissioners disagreed.

4. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.

Commissioner Driscoll pointed out the infrastructure issue in the Growth Policy. She stated with funding coming in from the developer, we are supposed to appropriately place infrastructure. If this variance goes in and then a number of other variances behind it, and we take the money collected from developers and manage infrastructure from Stevensville to Florence, it is not a good thing. Money coming in from a particular area should stay in that area. It compromises the Board if it is spread out over a larger area.

Commissioner Thompson stated the variance request is in compliance with the 1 per 2 interim zoning regulation and provides the necessary infrastructure, as outlined in the Growth Policy. He has viewed the road and stated it is a horrible road. He had to avoid the potholes and it needs to be repaired. We cannot continue to let people drive on this road without repair. This variance improves the safety on the road. We are getting a quality road that would increase safety and comply with the safety requirements in the Growth Policy and the subdivision regulations.

Commissioner Rokosch read Countywide Goal 4, which is to provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to the existing residents. Countywide Policy 4.2 states we are to consider cumulative impacts of development. Countywide Policy 4.4 is to improve and maintain existing infrastructure and public services. To the extent of providing what is necessary infrastructure to accommodate population growth, this proposal is clearly out of line with the Growth Policy.

Bill VanCanagan stated he would like to address Countywide Goal 4, which indicates the proposal must provide necessary infrastructure to accommodate growth and new development without impacts. He requested that the Board keep in mind the evidence the experts provided in the last meeting with the growth rate of 6%. The experts testified specifically that it was a conservative growth rate. The overlay proposed is 3 ½ inches which creates a 20 year life for the road. There is no other meaningful proposal to upgrade this road on the table other than chip seal. There are two options. This improvement is going to get done one way or another. It is either going to be chip sealed this summer which is going to create a structure that is inferior to what this proposal is. Or you can pass this proposal and accept \$600,000 from these developers and create a project that approaches \$1 million dollars of the total cost creating significant safety enhancement and some significant improvement to this road. The Board needs to consider the consequences of not doing anything today. Bill pointed out the language in

Countywide Policy 4.5 states that developers are responsible for providing infrastructure and that nexus and proportionality will govern external infrastructure costs attributable to the developer. You have to reconcile these two concepts. We have heard a lot of testimony about cumulative impacts but the Growth Policy states specifically that nexus and proportionality have to be considered. You have to reconcile these concepts. You cannot selectively pick and choose the concepts that you think are personally preferentially important here. He requested the Board listen to the testimony of the experts regarding Countywide Policy 4.1, which is encouraging development that would minimize cost to the existing taxpayers. This road is going to be improved this summer and either way it is going to cost the county \$300,000. There is no substantial increase to the taxpayers as the result of accepting this proposal. The developers are contributing \$600,000 which exceeds the proportionality to solve a problem. With all due respect, this process began with a legal dispute over nexus and proportionality. It ended several months ago with a solution. It was a solution that was orchestrated and designed not just by professionals, but your own people. Mr. Ohnstad from the Road Department with over 30 years experience, the Planning Staff, and the County Attorney's Office. There is a real opportunity here today. He submitted Matt Ulberg's resume to back up the testimony he has given for record.

Commissioner Rokosch stated he appreciates Mr. VanCanagan's attempt to frame this argument in the fashion that he has. He will agree with him on the point that this is a pretty simple issue. Our subdivision regulations call for developers to bring the road up to county standards when they have a proposal of a certain size. The developers know this when they started plans to develop. We have a third option here or even a fourth for the developers to meet the requirements of the subdivision regulations without taxpayer's contribution to the developer's project. We also have earlier testimony by Ms. Monahan that there is no alternative with regards to the right of way question. The solution is an RSID. Let's keep focused on the simple basis of our subdivision regulations.

Commissioner Driscoll stated she appreciates the nexus and proportionality discussion. If this was to go into place, we are not being fair to the developers because they would be putting money in, even at the conservative level, on this road. It would be used and for the other developers coming in after, they would save money. However, once they put the nexus and proportionality into the pot with the other developments coming in, it totals over \$4 million dollars. What do you do? Do you take the nexus and proportionality and return it to the developers? She would suggest the money go to the infrastructure in that area to clearly define we are being appropriate with the developers' money and considering nexus and proportionality as the law requires.

Commissioner Chilcott stated we know if the developers come back with multiple subdivisions with fewer than 20 lots, the pro rata paid will end up being collected over a period of years. In the interim, the citizens would be driving on a chip seal band aid with an anticipated life of seven years. We have an offer on the table of \$600,000. The amount it would cost the county taxpayer to provide labor for this proposal is very close to the amount they would be putting into a chip sealed road. With approval of this variance, the road will have new asphalt with a longer life at the same price. To him, it is a \$100,000

give or take benefit to the taxpayers to move forward with this and it does comply with the Growth Policy. We have Staff giving a recommendation that this is a good deal for the taxpayers. This is \$100,000 dollar benefit to the taxpayers and should be taken into consideration.

Bill VanCanagan stated he appreciates Commissioner Driscoll's comments on the use of pro rata. The question to be evaluated is what impact does this subdivision have and not what the impact is for the greater growth plan. This proposal provides an immediate solution to a severe problem. If this proposal gets denied, it is a concern of public safety. A RSID is not the solution and it was discussed for an extended period of time. We are talking about an immediate fix to a serious safety problem. You have to consider the protest period, and the cost and willingness of landowners to participate in an RSID. He does not think they can object to this proposal based on the probability of a third part offer. We have to focus on the issues today as to what impact this subdivision has.

Commissioner Rokosch responded to Commissioner Chilcott earlier statement and speculation in regards as to what may transpire with the decision to deny this variance. Another alternative is that the developers comply with the subdivision regulations and build the road they need to build.

Commissioner Chilcott stated RSID typically applies to local neighborhood roads and not to a road with this kind of public traffic and shared with another county. There are a lot of people that would be taxed on the use of this road that would not benefit. This benefits a number of people outside the neighborhood. Therefore, he does not think a RSID is the right solution.

Commissioner Rokosch stated if pro rata is not adequate, then we need to start looking at the pro rata calculations. He stated he has had some discussion with Kirk Thompson who was previously on the Planning Board and has a career as a road engineer with the Forest Service. He noted the need to seriously look at the formula for pro rata as being basically an inadequate calculation for the impacts of subdivisions.

Commissioner Driscoll stated one thing that has been blurred is people think the road is not going to be fixed. We have the money in the account to fix it. It depends on how you perceive it. We need to look at how they are going to get a better road with these subdivisions. There will be enough money to get a really good road. We are hearing only about the short term and we need to think about the long term here. The developers should be thankful that this is going to enhance their ability to have these properties with good infrastructure.

Commissioner Grandstaff requested a vote.

Commissioner Thompson and Commissioner Chilcott agreed. Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll disagreed.

5. The variance will not cause a substantial increase in public costs.

Commissioner Chilcott stated he estimated the taxpayers would receive a \$100,000 benefit. We can spend \$300,000 on chip seal with a seven year life or we can spend \$300,000 and get an asphalt road with a life of 20 years.

Commissioner Grandstaff stated they do have half a million dollars in the grader district account and could direct Mr. Ohnstad to use \$300,000 out of that for the chip seal costing the taxpayer nothing.

Commissioner Chilcott stated either way it is a wash. The \$300,000 is an existing cost the county is facing. We have a choice here, to either spend \$300,000 on chip seal with a life expectancy of seven years or spend \$300,000 on 3 ½ inches of asphalt with a life expectancy of 20 years with improved horizontal and vertical curves.

Commissioner Grandstaff replied Commissioner Chilcott is missing the point. It is \$300,000 out of two different pots of money. It is either going to be \$300,000 from the taxpayers or \$300,000 from the developers who are the ones who contributed the half a million dollars in the greater district.

Commissioner Chilcott asked why they cannot use the \$300,000 for the labor to improve the road to the million dollar mark.

Commissioner Rokosch stated the increase in public cost relate to the standards to which the subdivision regulations hold the developers. By allowing the developers off the hook is an increased cost to the taxpayers in the long run. We can continue to talk about what is in front of our faces with an expenditure of funds but it totally ignores the need to bring the road up to the standards. We have to deal with the full extent of the road network including the intersection if Eastside Highway with Eight Mile Creek Road. Those are all costs being ignored in the attempt of framing it as \$300,000 in one hand or the other. He would suggest a heck of a lot more money being passed on to the future taxpayers.

Jocelyn stated she would like to respond to Commissioner Rokosch's characterization of the substantial increase of public cost under the variance analysis. She stated in the beginning Commissioner Rokosch stated it was a matter of the overall goals of the regulations. Anytime you vary from the regulations it would increase public cost. With that view, a granted variance would not be possible. Anything that varied from the regulations would automatically increase the cost.

Commissioner Rokosch stated it is a matter of degree and he disagrees with her statement.

Commissioner Chilcott stated as for passing public cost to our children, if we move forward with the chip seal, we are deferring cost.

Commissioner Thompson stated whatever transpires today, the road needs to be fixed. This is a great way to utilize pro rata for that area and the variance will not create a

substantial increase. You are taking a different type of road improvement and implementing it. According to David Ohnstad, you are going to pay less money for a better quality of road.

Commissioner Chilcott stated we are talking about a couple of phases on this project. We are talking about public safety.

Commissioner Thompson and Commissioner Chilcott agreed. Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll disagreed.

Commissioner Grandstaff requested a ten minute recess at the end of which she then reconvened the hearing.

Renee requested confirmation on modifications to the findings in the staff report for those criteria where the Commissioners disagreed with staff. Under Criteria 5, the finding should be that the \$300,000 cost of providing labor should fall on the developer instead of the taxpayers. Under Criteria 1, the findings should state that the existing 50-foot wide easement is inadequate for a pedestrian trail and that the road standards for new construction would provide a safer road.

Commissioner Chilcott stated we have discussed an RSID option. Perhaps they could use it for a bike path since it would be more locally utilized as an option for the future.

Commissioner Driscoll stated there is good reason behind the standards. In this case, they need to stick with the 60 foot easement standard. The potential for an RSID is possible.

Commissioner Chilcott stated a 50, 60 or 80 foot easement is not the issue. The 60 foot easement is a standard and you can accommodate a path within it. If you can build the road you need within a smaller easement that is rationale to accommodate a good standard road.

Commissioner Driscoll replied it would compromise the standard. We are asking for a 60 foot easement.

Commissioner Rokosch read Section 7-3-5(b) of the Subdivision Regulations He then requested that Renee summarize their votes on the criteria.

Renee stated on Criteria 2 three of the commissioners agreed with the statement and two disagreed. She stated the conditions on which the request for a variance is based are unique to the property on which the variance is sought and not applicable generally to other properties. The majority of the commissioners agreed with the staff report.

Commissioner Rokosch requested that Renee read Criteria 3.

Renee stated physical conditions such as topography or parcel shape prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from

past actions of the land's current or previous owners. None of the Commissioners agreed with this statement. The conclusion of the Staff Report is that strict compliance with these regulations will result in undue hardship.

Commissioner Rokosch stated under those two criteria, there is not an overall positive finding.

Renee read under Criteria 1, which states the granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious other adjoining properties. She stated two commissioners agreed with the statement and three did not, which goes against the Staff Report. She stated Staff uses Criteria 2 and 3 to determine if there is undue hardship. They use Criteria 1, 4 and 5 to determine whether or not compliance is essential to public welfare. Renee read Criteria 4, which is the variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. Two commissioners agreed with the statement and three disagreed. The majority did not agree with the Staff Report. Renee then read Criteria 5, which is the variance will not cause a substantial increase in public costs. Two commissioners agreed with the statement and three disagreed. The majority did not agree with the Staff Report.

Commissioner Rokosch made a motion to deny the variance based on an overall negative finding on the variance review criteria. Commissioner Grandstaff seconded the motion.

Commissioner Thompson stated it is frustrating to him that the Board hires professionals in their field and they provide the Staff Report and then the Staff Report talks about meeting conclusions of the law through out its entirety. The Planning Department, Road Department and the County Attorney's Office sat down and reviewed this and came up with a reasonable agreement. We have to come up with ways to mitigate the impacts of these subdivisions. To sit down and say the Staff Report is completely wrong makes him disagree with the majority of the Board whole heartedly.

Commissioner Rokosch quoted the subdivision regulations as follows: in making this decision to approve, conditionally approve, or deny a proposed variance, the Board may consider or weigh the following as applicable: variance application; subdivider's expressed preference for mitigation; an officially adopted Growth Policy which shall be considered as one factor and shall not be the sole basis for any decision; comments, credible evidence, and discussions at the public hearings/meetings; Planning Department's Staff Report and recommendation; Planning Board's comments and any additional information authorized by law. The Staff Report is one of the seven types of information to consider.

Commissioner Driscoll stated we do not have a county engineer. Information coming from one engineer may differ from another. We did ask all the developers in that area to get together and work something out; However, they did not feel comfortable with that. It comes to this point of just two subdividers along with some Staff. We have some

unevenness with our experts. Our road supervisor is not an engineer. This information needs clarification and verification.

Commissioner Chilcott stated whether you are an engineer for another county or a developer, you are still an engineer with standards and clear guidelines on how you apply facts and figures. He stated he thinks it would be a mistake to discount the engineer who testified here today as misrepresenting the facts. They have a professional responsibility to present the facts as they apply. The facts speak for themselves and it is credible evidence. If we deny this variance, this subdivision is not going to go away. At the end of the day, if we approve this variance, the result will be a better road.

Commissioner Rokosch, Commissioner Grandstaff and Commissioner Driscoll voted 'aye'. Commissioner Chilcott and Commissioner Thompson voted 'nay'.

Commissioner Grandstaff asked to move forward with the variance request for Sandhill Ridge.

Bill VanCanagan requested Sandhill Ridge variance request stand on its own merit.

Renee stated due to the denial of the variance request for the Morado Mountain Estates Major Subdivision, the subdivision application would be deemed insufficient.

► Commissioner Grandstaff opened the public hearing for Sandhill Ridge Major Subdivision variance request and requested any conflicts of interest, hearing none. She then requested the Staff Report.

Renee stated the Staff Report for the variance is the same as Morado Mountain Estates and presented the Staff Report as follows:

**MORADO MOUNTAIN ESTATES
58-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST**

STAFF REPORT FOR THE BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Renee Lemon

**REVIEWED/
APPROVED BY:** Karen Hughes

PUBLIC MEETINGS: Planning Board Public Meeting: April 16, 2008
BCC Public Hearing: 9:30 a.m. May 6, 2008
Deadline for BCC action (60 working days): May 23, 2008

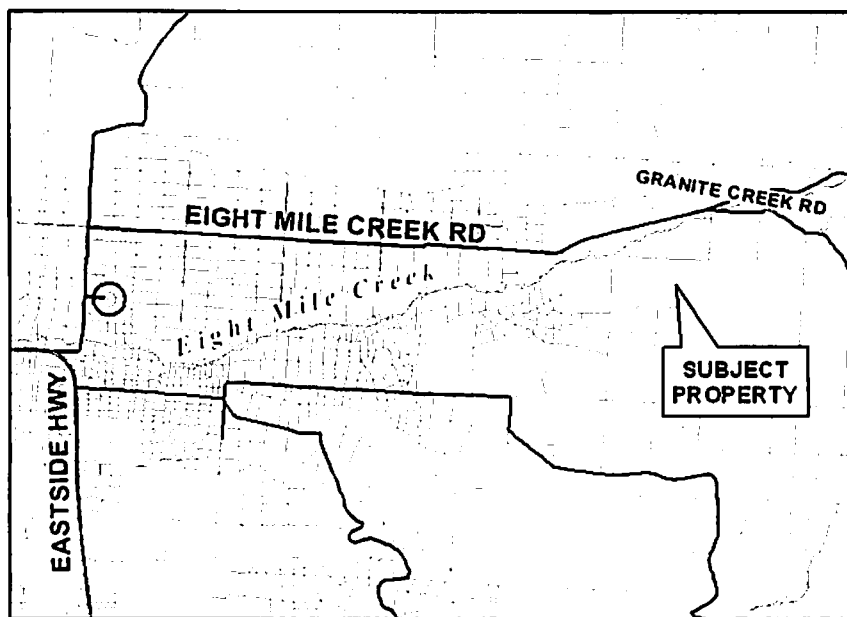
SUBDIVIDER: Morado Mountain Estates, LLC
705 Spanish Peaks Drive

Missoula, MT 59803

TITLEHOLDER: Marion McHatton
PO Box 746
Lolo, MT 59847

REPRESENTATIVE: Terry L. Forest, P.E.
DJ&A
3203 Russell Street
Missoula, MT 59801

LOCATION OF REQUEST: The property is located east of Florence off Granite Creek Road. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

The S2NW4 and the W2NE4 of Section 10, T10N,
R19W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined sufficient on February 29, 2008. Agencies were notified of the subdivision on April 16, 2007 and March 3, 2008. Comments received from agencies are Exhibits A-1 through A-31 of the staff report. **This subdivision is being reviewed under the Ravalli County**

Subdivision Regulations (RCSR) amended May 24, 2007.

LEGAL NOTIFICATION: A legal advertisement was published in the *Ravalli Republic* on Tuesday, April 1, 2008. Notice of the project was posted on the property and adjacent property owners were notified by certified mail dated March 12, 2008. One public comment was submitted. (Exhibit B-1)

**DEVELOPMENT
PATTERN:**

Subject property:	Agricultural/Open Space
North:	Agricultural/Open Space
South:	Agricultural/Open Space
East:	Agricultural/Open Space
West:	Agricultural/Open Space

INTRODUCTION

Morado Mountain Estates is a proposed 58-lot major subdivision located approximately 6.0 miles east of the community of Florence. Based on concerns from the Planning Department and Planning Board about the impacts of the internal road design on local services and public health and safety, the applicant has redesigned the subdivision. The redesign includes a second access via Riley Lane, potentially Haley Court, Jenne Lane, and Eight Mile Creek Road. Section 3-2-9 of the Ravalli County Subdivision Regulations outlines the process for amending an application after the application has been deemed sufficient but prior to the public hearing. The Planning Department has five working days to determine how the process will proceed with the amendments. During this time the sixty working day period is suspended. The applicant requested that the May 6th public hearing before the BCC remain. Due to the requirements of Section 3-2-9, planning staff cannot complete the staff report for the subdivision at this time. Planning staff recommends that the BCC review the variance request at the public hearing on May 6, 2008. At that time, the Planning Department will offer guidance on how to proceed with the subdivision review.

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay for the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the road standards for new construction. County road standards reflect the standards of the American Association of State Highway and Transportation Officials (AASHTO). AASHTO standards for existing construction differ from AASHTO standards for new construction.

PLANNING STAFF RECOMMENDED MOTIONS

1. That the variance request from Sections 5-4-5(a) and (b)(4) of the Ravalli County Subdivision Regulations be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.
2. Due to an amended application submitted by the applicant, the review of the subdivision has been suspended. The Planning Department will provide more information after reviewing the amended application. (Section 3-2-9, Ravalli County Subdivision Regulations)

PLANNING STAFF RECOMMENDED CONDITIONS FOR THE VARIANCE

1. The applicant shall meet the following requirements prior to final plat approval (*Variance*):
 - a) The applicant shall pay the cost of materials required to improve the portion of Eight Mile Creek Road from Station 5+50 to meet the county road standards for existing construction. The applicant shall submit a receipt from the Ravalli County Treasurer's Office 30 calendar days after both the Morado Mountain Estates and **Sandhill Ridge subdivisions** have been granted preliminary approval showing that half of the payment has been paid. The applicant shall submit a receipt from the Treasurer's Office showing that the remaining amount has been paid 45 calendar days after the first amount was paid;
 - b) The current 50-foot wide easement will be acceptable for the improvements;
 - c) Improvements to the north/south major collector segment of Eight Mile Creek Road will be at a road width of 24 feet for a distance of 3,150 feet, and the improvements to the east/west minor collector segment will be at a road width of 22 feet for a distance of 17,375 feet;
 - d) Applicants will pay for a 0.12-inch leveling course and a 0.17-inch wearing course. The mutually agreed upon calculations for the leveling course and wearing course over the areas noted in item (c) are:
 - i. 1,520 cubic yards crushed aggregate for the shoulders at \$11.00 per cubic yard equaling \$16,720.
 - ii. 4,680 tons plant-mix asphalt at \$45.00 per ton equaling \$210,600.
 - iii. 7,625 tons plant-mix asphalt at \$45.00 per ton equaling \$343,125;
 - e) Additional improvements will require that applicants pay for 1 (10x3x48) Concrete Box Culvert at \$420 per foot + \$2,700 in delivery costs for a total of \$22,860;
 - f) The total costs under (d) and (e) is \$593,305, but the applicants acknowledge this total is subject to change depending on the unit cost of plant-mix asphalt. The parties also acknowledge that these calculations were generated by David Ohnstad at the Ravalli County Road and Bridge Department; and,

- g) The applicant's expenditures for Eight Mile Creek Road improvements will be offset by any pro rata payments made in the same grader district from the time either subdivision is preliminarily approved until the time of Eight Mile Creek Road reconstruction. (*Section 3-2-8(a), RCSR, Prerequisites to Approval and Variance*)
2. The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit C. (*Variance*)

VARIANCE REQUEST

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay for the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county road standards (or AASHTO standards) for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the county standards for new construction.

Variance Analysis

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

Prerequisite Variance Criteria

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Variance Review Criteria

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

Five Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. Eight Mile Creek Road is a county-maintained road that provides access to the proposed subdivision from Eastside Highway to Granite Creek Road. (Exhibit A, RCSR)
2. It is estimated that this subdivision will generate an additional 464 vehicular trips per day. (Morado Mountain Estates Subdivision Application)
3. The applicant is required to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for new construction. (Section 5-4-5(a) and (b)(4), RCSR)
4. Eight Mile Creek Road currently has a varying travel surface width around 22 feet, 1 to 2-foot wide shoulders, and a 50-foot wide easement. The road does not meet county standards for new construction. (Morado Mountain Estates Subdivision Application)
5. The Montana Department of Transportation (MDT) is planning to reconstruct the intersection of Eastside Highway with Eight Mile Creek Road to be a roundabout in the future. The completion date is not known. (Morado Mountain Estates Subdivision Application)
6. Since MDT will be improving the intersection of Eastside Highway with Eight Mile Creek Road, the required improvements would begin approximately 500 feet north of the existing intersection (Station 5+50 on the aerial photography submitted with the road plans). (Exhibit A-23)
7. The applicant originally requested a variance from improving Eight Mile Creek Road and instead proposed to pay a pro rata share. The Road Department strongly opposed the variance request. (Exhibit A-18)
8. The applicant, the applicants of Sandhill Ridge (another proposed subdivision that accesses off Eight Mile Creek Road), the applicants' engineers, the applicants' attorneys, the Road Department, the Planning Department, and the County Attorney's Office had several meetings and substantial communication about the required improvements to Eight Mile Creek Road. (Exhibit A-23)
9. The applicant is now requesting a variance from Section 5-4-5(a) and (b)(4), which requires that Eight Mile Creek Road be reconstructed to meet the county road standards for new construction, and is instead

proposing to pay the cost of materials associated with constructing the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for existing construction with the exception of easement width. To mitigate the fact that the current easement width cannot fit a pedestrian path, the applicant is proposing a 50-foot wide trail easement through the subdivision in case there is area trail planning in the future. (Morado Mountain Estates Variance Application)

10. The following improvements are needed in order for Eight Mile Creek Road to meet the county road standards for existing construction, except for easement width:
 - a) Road preparation, which would address any roadside drainage issues
 - b) A 24-foot wide pavement overlay from Station 5+50 in the preliminary road plans to the intersection with Lower Woodchuck Road
 - c) A 22-foot wide pavement overlay from the intersection with Lower Woodchuck Road to Granite Creek Road
 - d) 2-foot wide gravel shoulders on both sides over entire length
 - e) A 0.12-foot thick leveling course on the entire length
 - f) A 0.17-foot thick wearing course on the entire length
 - g) Asphalt aprons on the 49 driveway approaches along the entire length
 - h) A new box culvert installed at Station 5+50
 - i) Advance warning signs and speed advisory traffic control signs
11. The applicant submitted preliminary road plans to improve Eight Mile Creek Road to meet AASHTO standards for existing construction from Station 5+50 to Granite Creek Road. The proposed road improvements can be accomplished within the existing 50-foot wide easement. (Morado Mountain Estates Variance Application)
12. The applicant submitted four design exceptions for the horizontal curves along Eight Mile Creek Road. (Morado Mountain Estates Variance Application)
13. The Road Department granted preliminary approval of the road plans and the four design exceptions. (Exhibit A-17)
14. The cost of materials for the improvements is estimated at \$593,305.00. (Exhibit A-23)
15. David Ohnstad, Road and Bridge Department Supervisor, has agreed to provide the labor if the applicants provide the cost of materials. (Exhibit A-23)
16. The applicants of Morado Mountain Estates and Sandhill Ridge have agreed to share the cost of materials for the improvements, and request that the County provide the labor. (Exhibit A-23)
17. The applicants are also requesting that any pro rata money submitted in the same grader district between the time Morado Mountain Estates and Sandhill Ridge receive preliminary approval and the time the improvements to Eight Mile Creek Road are completed be reimbursed to the applicants. (Exhibit A-23)
18. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)

19. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*
20. *The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit B. (Condition 2 of Variance Approval)*

Conclusions of Law:

1. If the applicant fulfills the requirements of Condition 1, then the County would receive the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction.
2. A 50-foot wide trail easement through the subdivision would provide the opportunity for an alternative off-road trail if the Eight Mile area is developed in the future.
3. The granting of the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. Section 5-4-5(b)(4) requires that applicants of subdivisions with more than 20 units improve all roads leading to the subdivision to meet county standards for new construction. (RCSR)
2. There has been increased development activity proposed to access off Eight Mile Creek Road. (Ravalli County Planning Department)
3. Sandhill Ridge, a 35-lot major subdivision that also accesses off Eight Mile Creek Road, will be reviewed by the BCC on May 8, 2008. The requirement of Section 5-4-5(b)(4) also applies to Sandhill Ridge. (Sandhill Ridge Subdivision Application)
4. The applicants of both Morado Mountain Estates and Sandhill Ridge are proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Morado Mountain Estates to meet county standards for existing construction. (Morado Mountain Estates Variance Application)
5. The Road Department stated that constructing Eight Mile Creek Road to meet county standards for existing construction is acceptable for the combined ADT that would result from Morado Mountain Estates and Sandhill Ridge for the following two reasons (Exhibit A-23):
 - a) The current condition of Eight Mile Creek Road does not require complete reconstruction
 - b) The horizontal and vertical curvature of Eight Mile Creek Road is generally level

Conclusions of Law:

1. The fact that Ravalli County has two development proposals that are required to make road improvements on the same road is a unique condition.
2. The recommendation from the Road Department that the applicant should improve the road to meet the road standards for existing construction is a unique condition.

C. Physical conditions, such as topography or parcel shape, prevents the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The horizontal and vertical curvature of Eight Mile Creek Road is generally level. (Exhibit A-23)
2. The easement width for Eight Mile Creek Road is 50 feet. (Morado Mountain Estates Variance Application)

Conclusion of Law:

The challenge of purchasing additional easement to reconstruct the road to meet county standards for new construction is not a physical condition.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined in italics below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

Countywide Policy 4.2: Consider cumulative impacts of development.

Countywide Policy 4.4: Improve and maintain existing infrastructure and public services.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and

proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. The applicant is also dedicating a 50-foot wide trail easement for future area trail planning. (Morado Mountain Estates Variance Application)
- The Road Department has granted preliminary approval of the road plans and recommends that the proposal be approved. (Exhibit A-23)
- The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
- *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. The applicant shall also provide for a 50-foot wide trail easement, as proposed in Exhibit B. (Conditions 1 and 2 of Variance Approval)*

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulation.
2. The variance will not vary from the provisions in the Growth Policy.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. (Morado Mountain Estates Variance Application)
2. The Road Department has granted preliminary approval of the road plans and recommends the proposal be approved. (Exhibit A-17)
3. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
4. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.

Prerequisite Variance Criteria

A. Strict compliance with these regulations will result in undue hardship.

Findings of Fact:

1. The conclusion for Criterion B is there are unique conditions associated with the variance request.

2. The conclusion for Criterion C is that there are no physical conditions preventing the applicant from acquiring the 60-foot wide easement and constructing the road to meet full county standards.

Conclusion of Law:

Strict compliance with these regulations will result in undue hardship.

B. Compliance is not essential to the public welfare.

Findings of Fact:

1. The conclusion for Criterion A is that granting the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.
2. The conclusions for Criterion D are that the variance request complies with applicable zoning regulations and does not vary from the provisions in the Growth Policy.
3. The conclusion for Criterion E is that the granting of the variance will not cause a substantial increase in public costs.

Conclusion of Law:

Compliance is not essential to the public welfare.

C. Overall Conclusion on Hardship and Public Welfare

The variance application provides evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.

Commissioner Grandstaff opened public comment.

Julie Titchborne stated she is a civil engineer with WGM Group. She requested that comments from engineers and attorneys given during the public hearing for Morado Mountain Estate be entered into the record. Commissioner Grandstaff agreed. Julie stated there was talk of a RSID but there was not bonding capacity. There has to be a certain density of property and willingness to support a RSID. Failure to do that now does not prevent the County from working on it in the future. She suggested planning by the commission sometime in the future for a pedestrian/bike path or a future widening of the road. She stated the subdivision needs to be reviewed in a serious manner no matter which one is presented to the Board. Whatever is decided today affects not only the two developers but you also get to choose at every point down the line. This is a modest proposal. She discussed the growth rate of 6% for the Eight Mile district. She reminded the Board that it is not only for Morado Mountain and Sandhill Ridge but it allows an estimated growth for the whole of the Eight Mile Creek Road area. The growth rate projection of 6% is a very high rate. She would also like to remind the Board of Terry Forest's statement of the maintenance costs for the road. She stated if they do a chip seal now at \$300,000, it would have to be replaced every six years. If they do the improvements that have been brought forth, maintenance would probably happen in

another 18 years. She stated with the calculations by Terry it would cost the County overall \$17,402 per mile per year for maintenance of the chip seal versus \$4,600 per mile per year for the asphalt variance request. She stated it is a huge difference. The cost of a standard road is about \$1 million dollars per mile with a 60 foot easement. She pointed out the design exception process that Mr. Ulberg talked about. It is a common thing and it is done when there are topography constraints, right of way constraints, and any other physical constraints. Mr. Ulberg has done many transportation projects and most everything he has done with MDOT has design exceptions. She asked the Board to adopt the road proposal variance and use their leadership and vision to come up with a plan. She requested Kristin Smith to give an overview.

Kristin Smith stated she is a land use planner with WGM Group. She stated they are in agreement with the Planning Staff Report. She discussed they are in agreement with everything in the report except that the report does not weight the burden of obtaining the extra width of the easement. It is a burden placed on the developers to acquire the additional 10 feet. The 6% increase is not an increase in population but in traffic growth. Finding creative solutions is becoming more common in these areas. It encourages working with the developers and the community.

Matt Ulberg stated he is a traffic and transportation engineer with DJ&A. He has a Masters Degree in traffic and transportation engineering, civil engineering law degree from Montana State University, and 10 years experience with consulting. Before that he was in research at the University directing transportation technology research at one of the largest transportation technology research facilities in the western United States. He is currently under contract with the federal highway administration through his firm for design, review and improvement of road ways throughout the western United States. He has done work in several different states and national parks. He is a resource for safety design. He stated that he wanted to enter all his previous testimony at the Morado Mountain Estates Variance public hearing into the record for the Sandhill Ridge Variance. He stated he helped Terry with the numbers brought forth for maintenance and costs on the road. Those numbers were deemed accurate by the County Road Department. He stated with the approval of the variance request, the cost would be \$300,000 to the county and \$600,000 for developer funds with the total cost being \$900,000 with the life of 15 to 20 years. He stated one consideration is the amount of commercial traffic on the road. The operational and maintenance cost for 18 years would be \$331,222 to the county; \$82,806 per mile; \$4,600 per mile per year. Without the variance request, the cost is \$300,000 for county funds with a life of 5 to 7 years.

Matt discussed they are using 8 trips per day per household for a conservative measure. He presented to the Board the difference between both proposals for the road surface.

Commissioner Grandstaff asked if there was any discussion with the developers about what they would do if they did adhere to the county subdivision regulations and brought the road up to county standards at their own cost.

Matt replied that has not been discussed with him. He stated it would cost a little over a million to a million and a half making the total for the road about 10 million to improve to county standards.

Kristin stated it would be cost prohibitive and that is why it would be resubmitted as less than 20 lots. With a bigger, wider road, people drive faster.

Commissioner Driscoll asked about the 6% growth rate and whether or not that included the 855 lots in preliminary plat phase.

Matt replied if you have 855 lots and then add the 200 plus lots that are existing, your traffic is going to double. Matt further discussed the building out of these lots versus pro rata shares to get the road up to county standards. He stated without a unanimous decision of the Board, it would be disastrous.

Commissioner Rokosch asked if core samples would be taken to figure out the AASHTO standards for new construction.

Matt replied it is the decision of the road department. For a Capital Improvements Plan, core samples should be taken.

Commissioner Rokosch asked if the curves could be realigned within a 60-foot wide easement.

Matt stated an exception would still be needed for the curvature. The curvature is not currently causing a safety problem. With Eight Mile, you have a 50 year plus history of heavy equipment without a problem. The base is going to support whatever you do.

Commissioner Thompson stated the Board met with Missoula County and they gave information regarding existing properties that can access off of this road.

Commissioner Driscoll stated she believes the number was about 800.

Matt asked if the County has a CIP.

Commissioner Rokosch replied no.

Matt stated even if you did have a CIP, it does not mean Eight Mile will float to the top of the priorities list.

Commissioner Rokosch stated they needed to get a CIP done ten years ago.

Matt stated the grader district is very large.

Commissioner Chilcott stated David Ohnstad has been working on road conditions and bridge counts for a CIP.

Renee Lemon entered written public comments that had been received since May 8, 2008 into the record.

Jim Shreve stated the Fire Department has been asked for input on roads. On this road, they have some real concerns with the response time. You are putting someone's life in your hands without granting this variance. They still have to respond to all calls whether there are 20 lots or more. We are not going to be able to do it with more growth. We need better services and the capital to draw from. The Fire Department supports this variance.

Paul Wilson stated he owns the Sandhill Ridge Subdivision. The proposal is over 20 lots. You have to ask why not do a 20-lot subdivision and just throw in the pro rata to be done with it. He stated with the 1 per 2, he wanted to do it a better way. He wanted to set an example for other projects to follow suit with public health and safety. He has worked cooperatively with the Planning Department and Park Board; however, he pays a price with asking for a variance. He drives Eight Mile Road and it is falling apart. Now as a developer, he has a regulation to get a 60 foot easement on a county road that is 50 feet. He has to buy 10 feet of land from all people on that road which is an undue hardship. He does not have that kind of money, so he requested the variance. The people in that area want the road improved. Almost every email that has come in against this variance comes from people who do not live on that road. The people want the road fixed and fixed well. The developers have offered to work in a cooperative manner with the County and the residents. This is not a gift the County is giving us. Do you think 30 lots generate that kind of money? This is an opportunity to rise to the occasion and leadership of this community. These projects will not go away. They will come back in 20 lot increments and the County will get the pro rata and the road will remain the same. You talk about the additional developments coming along and the county is going through the zoning process. You will lose 15 acres of park land and 25 acres of open space and tax revenue. He does not know what the deal is. It seems you are so agenda driven that you would ignore public safety.

Commissioner Grandstaff asked if Paul understood the Subdivision Regulations when he bought the land.

Paul replied yes, he did.

Commissioner Rokosch asked Paul if he was party to the condominium suit.

Paul replied yes but he does not see the relevance to this variance request.

Commissioner Rokosch asked if he had been deemed a condo, he would not be subject to the subdivision process. He said in Paul's statement that he tried to create a public/private partnership needs to be put in context.

Paul replied it is subject to legal counsel. He stated that he believes in supporting the community.

Michael Howell requested clarification on the variance request proposal to pay \$600,000 towards improving the road.

Renee replied the \$600,000 would be split between the two developers.

Bill Zader stated he lives on Eight Mile. He grew up with agriculture and horses and a sense of helping each other. He thinks this is the most beautiful place to live. This is so simple, we want the road. You need to do the right thing and uphold your oath of office.

Bill Scullion stated they have 34 residents in his subdivision, which is East Riverview Orchards. They hosted a meeting a couple of weeks ago regarding the road. During the last meeting for Morado Mountain Estates, the Board discussed the paths. They have discussed an RSID and set up a committee to work on it. He has sent five emails to Commissioner Rokosch and has not received any response from him. Last year they had a problem with Eight Mile and went to the Road Department and were told there was not any money in the budget. That excuse is not going to work any more. With the money already paid in taxes, there will be repair. He has distributed a petition with 36 signatures for the proposal and one against. He stated there is a lot of misinformation going around. He requested emails sent to Commissioner Rokosch be put into the public record. He stated this is not functionable because there is no participation. The history says it is not going to happen. He requested to be forgiven but history states nothing will be done. He does not believe in the Board at all. The problem they face is today and it is a starting point and not an ending point. These problems are only resolved by common sense and working together. Every professional person has done the work and you sit here in your glory and shake your head no and are in disagreement with the professionals you hired. If you deny this, you are still going to have a 50 foot easement. He would like to be told when this variance is denied when the 60 foot easement is going to be obtained. You cannot impose these kinds of problems on to these two subdivisions. He stated they will fight the Commission every step of the way if the variance is denied. He does not see involvement. You need to step up and help the community.

Commissioner Rokosch stated he would be willing to schedule a meeting with Bill.

Bill replied it is too late. He is fed up with the lack of communication and unwillingness to participate on Commissioner Rokosch's behalf.

Commissioner Grandstaff recessed until 1 p.m.

Commissioner Grandstaff reconvened the meeting at 1 p.m.

Curtis Cook stated there are several things he wishes to speak about. He pointed out the variance criteria posted on the chalkboard. He stated number two is only half there. The other half is that the conditions are not applicable generally to other properties. Unique means one of a kind or the only one. He stated the Sandhill request for variance shot themselves in the foot because there is two and with two they are not unique. As for

being applicable to Sandhill and Morado Mountain variance request, everyone on Eight Mile Creek Road is on the same boat. Curtis stated the only hardship here is financial. He stated Commissioner Chilcott commented a financial hardship cannot be counted. Curtis commented the Planning Board was right and the variance should be denied.

Henry Silverio stated he has watched the process of these meetings in the county. If you don't deal with the short term safety issue on Eight Mile Creek Road, you could have a death and then who is responsible for that? We are sacrificing short term goals for long term. Today there was a talk of 4 million dollars. How about buying those easements for over a long term to resolve the problem? The Commissioners are charged with protecting the citizens of the County. Any reasonable persons watching these meetings are going to conclude they did not have a fair meeting. Alan Thompson should have been the only commissioner to vote at the last hearing because the previous meeting was continued to allow him to vote. However, you continue to ignore your own employees and the expertise of others. Your mind was already made up to say no. He does not see that as smart planning. The variance is in the best interest of the people.

Del Post stated he is a resident of Eight Mile Creek Area. He would like to request approval of the variance of Sandhill Ridge. He has spoken to numerous residents and they support the developers' plan to improve the road. This is a safety issue. He is a father of three children who travel on that road. He has spoken with the bus driver who has told him there is a near miss everyday with kids running across the road and a driver swerving to avoid pot holes. This is an opportunity for a park and open space and trails. It will decrease travel since a park could be enjoyed nearby. For the RSID, he detests the notion of having to pay again to improve this road. He has already paid pro rata for his home through the subdivision lot he bought. The problem with the pro rata share is the money goes into an account and the road never gets the benefit of it. This is an opportunity for the county to address this once and for all. Whether or not the subdivision gets approved is irrelevant here. Where is the public cost and substantial increase to the taxpayers? How long are we going to have to wait for this issue to be addressed? This is a good project and requested the Board to recognize the people's wishes for the variance.

Terry Basolo stated he has testified before. He lives at 902 Granite Creek Road. He is working on a minor subdivision and it has nothing to do with his subdivision. He used an analogy of an elephant being eaten one bite at time. It seems the best solution is to pave this road and stated he is concerned with a bus turnout. Children are not walking along Eight Mile Creek Road, but are walking out from connector roads to the bus pick ups. He recommended that landowners donate land for bus shelters. With 50 foot or 60 foot easements, he does not believe it will create a safe path for children and it is not economically feasible. He is amazed with the Board today and the views brought forth. The citizens have spoken and there are some pre-conceived ideas by the Board. There is an antigrowth group among the citizens that is now out of hand. People should always have an opportunity to move here. The people who are getting hurt are not here today to speak such as the lower income and lower tier people. You say you are concerned about the children and safety; however, no actions today have reflected those concerns. Right now the economy is not good but these are good projects and when the pendulum swings,

it will be different. Commissioners are elected and can be unelected and it is a shame. Our kids should be able to live here as well as grandkids. This antigrowth agenda needs to stop.

Commissioner Grandstaff noted the Board of County Commissioners has approved several subdivisions over the past year with denial of only two.

Ben Hillicoss stated he would like his testimony from the May 6th public hearing for the Morado Mountain Estates Variance to be entered into the record.

J.R. Iman stated this particular subdivision and request was done with county government to come up with a solution for everyone involved. The people you are hurting are the people in the 1,500 cars coming to the road everyday in hope for the road they have been waiting for. It is hard to get people to step up with money to get the job done and now they have, only to be turned down. Here comes an opportunity to change that and it is not getting done. He urged the Board to consider that six Planning Board members out of ten did not have their voices heard at the meeting for this request.

Roger Mikesell stated he is a rancher and has been since 1969. He has gone door to door to find out if people wanted the road fixed whether a subdivision is involved or not. Not one person said no. He would like to know what the Board's vote would be if the developers came in without a subdivision and threw down \$600,000. It would have been accepted. He is appalled with the Board's attitude towards this.

Candy? Higgins stated she lives on Jenne Lane. Growing up, there was only one bus running on Eight Mile and now there are four buses. By putting in chip seal, it is a band aid. It is time to get rid of the band aid. She has video taped driving on Eight Mile Creek Road. This is past the band aid stage and it needs to be fixed so it is safe for the buses carrying school children.

Les Rutledge stated he is not representing the Planning Board but as a citizen. If the County chip seals the road now, in five years there will be enough pro rata to fix the road to meet county standards.

Bill VanCanagan requested the Board reconsider the vote on Criteria 1, which is that the granting of the variance will not be detrimental to the public health, safety and general welfare. We have heard extensive testimony from the experts and David Ohnstad. Some of the comments from Mr. Ohnstad are note-worthy. He quoted several comments from Mr. Ohnstad. The transcript from the last proceeding is full of statements from Mr. Ohnstad in favor of this variance. This record does not support a significant cost increase to the public. The cost to the County is \$300,000 whether or not the variance is accepted. He requested that the Board reconsider the decision here today.

Jessie Reeves stated he is a new landowner in Ravalli County. He took the time to go door to door in Eight Mile to find out what the people really thought of the variance request. You can read things and hear things in the news but talking to people face to face

is different. There are two sides to every story. With the proposal at hand, he is disappointed as a taxpayer because it is apparent the Board has already made up their mind with the variance. He is requesting that the Board look outside of their personal agendas. Knowing the effects of that vote is disappointing since the majority of the people want this variance. The people that are opposed to it are so far out there that it is obvious there is another agenda. When you go home tonight and think about what has happened to today, ask yourself how you could disappoint so many people.

Brooks Cole stated he would like to put it in a different prospective. You are going to buy a house with a roof that needs work. You can get a great patch job with a seven year guarantee or a new roof with a 20 year guarantee at the same price. What would you choose?

Chris Larson stated his only access is Eight Mile. It takes about a half hour to get to Florence which means it takes the fire and rescue department that long to get to his house. He does not understand why the Board would not grant the variance to improve the road. He requested that the Board drive the road at 50 miles per hour or better yet at 15 miles per hour. He was one of the individuals who went out and spoke to the people living on Eight Mile Creek Road. People want the road improved. They do not really care about the subdivision but rather getting the road fixed.

Terry Forest stated over lunch they discussed strategy for Morado Mountain Estates. They have proposed to have a 20 lot plan ready. Then there will be just the pro rata.

Commissioner Grandstaff asked Terry if his client knew when she developed the land that she would be paying for the road to be brought up to county standards. Terry replied his client did not know how hard it would be to get through the subdivision process.

Henry Silverio asked why have a variance process at all if the Board has no intentions of approving them.

Commissioner Grandstaff closed public comments. She noted that the Planning Board's recommendation has already been entered into the record during the staff report. She asked if they could transfer deliberation from the public hearing for the Morado Mountain Estates variance request.

Commissioner Thompson stated he has a problem with adopting the Board findings from the Morado Mountain Estates Variance since there may be additional findings. There were a few things that were said different.

Commissioner Chilcott noted that they did not have the operational cost difference between the chip-sealed road and the paved road.

Commissioner Driscoll agreed.

Commissioner Thompson noted that they had new comments from the Florence Fire District.

George Corn recommended that the Commissioners work through the variance criteria.

1. No Adverse Impacts on Public Health, Safety, or General Welfare to injury to adjoining landowners.

Commissioner Rokosch asked that the comments regarding this criterion in the public hearing for Morado Mountain Estates variance be included in testimony for the Sandhill Ridge variance.

Commissioner Chilcott pointed out this is advantageous since it would increase the public health safety and general welfare.

Commissioner Thompson stated regarding a walking path, he reviewed the comments from the road department and it stated a path is not recommended in the 60 foot easement. One thing the county could do is condemn property to provide an 80 foot easement for a walking path. He discussed the Board has dealt with this road over a period of ten years. Saying you cannot get a pedestrian pathway should not be the only factor.

Commissioner Driscoll stated 13 people signed the petition that Mr. Scullion referred to and one was against. 35 people were in attendance at the meeting organized by Mr. Scullion. The other point that Jim Shreve mentioned is that we need growth to pay for those structures. Residential development costs us money. We have to be careful of funding because it draws from our resources. The Park Board is looking at the Mikesell Property for a regional park for all the development. We have to look at the overall view.

Commissioner Chilcott stated he would like to remind everyone that County staff recommended approval of this variance.

Commissioner Chilcott and Commissioner Thompson agreed. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll disagreed.

2. The reasons for the variance are unique to the property.

Board discussion followed regarding the uniqueness of this subdivision being presented with another subdivision at the same time.

Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll agree. Commissioner Grandstaff and Commissioner Rokosch disagree.

3. Physical conditions such as topography or parcel shapes prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owners.

All Commissioners disagree.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Commissioner Chilcott and Commissioner Thompson agreed. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll disagreed.

5. The variance will not cause a substantial increase in public costs.

Commissioner Chilcott and Commissioner Thompson agreed. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll disagreed.

Commissioner Grandstaff entered the findings for the Morado Mountain Estates Variance into the record for the Sandhill Ridge Variance.

Commissioner Rokosch made a motion to deny the variance request based on an overall negative finding on the variance review criteria. Commissioner Driscoll seconded the motion. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted 'aye'. Commissioner Thompson and Commissioner Chilcott voted 'nay'. Motion carried.

► Commissioner Chilcott made a motion to convene a public meeting to discuss and decide on a vote on the countywide zoning at the first available date. Commissioner Thompson seconded the motion.

Commissioner Grandstaff stated she is against this based on pitting neighbor versus neighbor. Commissioner Chilcott stated we are talking about zoning, good or bad, we need to listen. Commissioner Grandstaff stated we voted on this three times. We have voted for the growth policy, 1 per 2 and 2 new commissioners. Commissioner Chilcott stated we let Darby vote therefore we should let the citizens vote. Commissioner Grandstaff said asking people to come out and get upset with each other and call other people names is not what should be done. Commissioner Chilcott said we should let people vote and focus our discussion on that in a civil manner. Commissioner Driscoll stated right now, through the process the landowners get to voice more than citizens. If we go ahead and do that, we get the hopes up of the voters. We are in the process and should stay with the process.

Commissioner Chilcott and Commissioner Thompson voted 'aye'. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted 'nay'.

SIGN IN SHEET - COMMISSIONERS MEETING

PLEASE PRINT YOUR NAME LEGIBLY

DATE: May 27-08

MEETING: Variance

<u>Bill Zader</u>	<u>273-2530</u>
<u>Jodi Ravis</u>	<u>239-1127</u>
<u>Shawn Rupp</u>	<u>396 0328</u>
<u>Janes Knapp</u>	<u>360 4371</u>
<u>Deidre Slagle</u>	
<u>Steve Slagle</u>	
<u>Tracy Hite</u>	<u>368-6779</u>
<u>Roger Mikesell</u>	<u>273-6510</u>
<u>William DELONEY</u>	<u>375 9315</u>
<u>John Kitchin</u>	<u>728-4611</u>
<u>KEITH SMITH</u>	<u>" "</u>
<u>Rol Weese</u>	
<u>Jonathan Duncan</u>	<u>375-7228</u>
<u>Terry Basolo</u>	<u>273-3700</u>

SIGN IN SHEET – COMMISSIONERS MEETING

PLEASE PRINT YOUR NAME LEGIBLY

DATE: May 27, 2008

MEETING: Variance

Curtis E. Cook

James Roussele

Ron Spillane

Teri Polunsky

John O'Leary

Sharon Renfro

Candi Higgins

Ray Tipton

Jack Saunders

Karin Larson

Chris Larson

Jesse Reeves

Les Rutledge

Ben Hollicoss

Jimie McDowell

Adam SENECHAL

Donna O'Leary

273-2296

961-2440

273 4262

273 4262

546-5080

375-9241

777-0187

Glenda Wiles*May 27th
minutes*

From: RICHARDANDSHARON RENFRO [sammcfro@dishmail.net]
Sent: Tuesday, May 27, 2008 12:21 PM
To: Glenda Wiles
Subject: 8 mile road

Dear County Commissioners, We were at the meeting this AM and thought that no public comment was going to be taken. We left since we had work to do and so we are sending you some thoughts on the 8 Mile Road issue.

A proposal is just that, "a proposal". You might ask the developers for a little more money for 8 Mile Road improvements. If they have offered "A" for an amount, they are probably able and willing to pay "B" to get the job done. That is the nature of realtors, developers, negotiate with them. Development is coming and you might as well get this money for much needed immediate improvements. We agree that this money needs to be earmarked for improvement to 8 Mile Road and not just pour into general fund.

We own properties off 8 Mile Road and have seen this road deteriorate to its very unsafe present condition, and know something needs to be done now. Negotiate their offer up a little and take the money and get this road fixed.

And also part of the negotiation could be that when each lot sells, and/or each lot is built on and house is sold, then part of cost to buyer/seller would be a fee that would be specifically earmarked for 8 Mile Road maintenance. It is a fact that all the heavy equipment used to build roads, houses, wells, septic systems, as well as the large delivery trucks for lumber, concrete, trusses etc. put a lot of strain on the roads to the subdivision. So this maintenance fee attached to each lot and then to each subsequent house sold, should go into the maintenance fund for maintaining the new 8 Mile Road the developers built, as it will be stressed and used very hard by such vehicles needed to build out their subdivision. So a fee attached to each home, is very reasonable and very proportionate. This being in addition to the monies they are giving upfront to fix 8 Mile Road.

Thank you for taking our comments. Richard and Sharon Renfro

5/27/2008

PRELIMINARY COST ESTIMATE

EIGHT MILE CREEK IMPROVEMENT OPTIONS

BITUMINOUS SURFACE TREATMENT OVER RECLAIMED PAVEMENT

1) RECLAIMER RENTAL	\$35,000.00	
2) MODIFIED ASPHALT OIL	\$95,000.00	
3) CRUSHED AGGREGATE	\$19,000.00	
4) TOTAL MATERIALS (CASH EXPENDITURES) (STEVENSVILLE CAPITAL RESERVE ACCOUNT)		\$149,000.00
5) GRADE & COMPACT & INCIDENTALS	\$65,000.00	
6) PLACE (DOUBLE) BST	\$75,000.00	
7) TOTAL FORCE ACCOUNT		\$140,000.00
TOTAL PROJECT		\$289,000.00

LEVELING COURSE / WEARING COURSE / AGGREGATE SHOULDERS

1) PRECAST CONCRETE BOX	\$ 22,860.00	
2) ACP LEVELING & WEARING	\$553,725.00	
3) SHOULDER AGGREGATE	\$ 16,720.00	
4) TOTAL MATERIALS (CASH EXPENDITURES) (2 PROPOSED RESIDENTIAL DEVELOPMENTS)		\$593,305.00
5) CULVERT INSTALLATION	\$ 7,500.00	
6) PREPARATION & INCIDENTALS	\$130,000.00	
7) PLACE LEVELING & WEARING	\$ 95,000.00	
8) SHOULDERS & APPROACHES	\$ 25,000.00	
9) TOTAL FORCE ACCOUNT		\$257,500.00
TOTAL PROJECT		\$850,805.00

FORCE ACCOUNT = PERSONNEL COSTS & INTERNAL EQUIPMENT RENTAL RATES

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:20 PM
To: Renee Lemon
Subject: FW: Subdivision Variances

From: GERALD LEWALLEN [mailto:bevnjer_65@msn.com]
Sent: Friday, May 23, 2008 1:07 PM
To: Carlotta Grandstaff; James Rokosch; Greg Chilcott; Kathleen Driscoll
Subject: Subdivision Variances

Commissioners,

It seems incredible to me that you, the supposed representatives of the residents of Ravalli County, would even be considering granting variances to developers and encumbering the county with more debt. We are in an economic downturn and to provide monetary supplements to developers is unconscionable. I know, in the past, the commission went against the advice of the planning board and we are now facing the consequences of those actions with crumbling roads that cannot be maintained. If developers want to build anywhere in this valley, they should bear the entire costs of that project and be able to meet all rules and regulations without any variances granted.

Thank You,

G.V. Lewallen
bevnjer_65@msn.com

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:21 PM
To: Renee Lemon
Subject: FW: Morado Mountain Estate and Sandhill Ridge

From: MARC COOKE [mailto:mcookemontana@msn.com]
Sent: Friday, May 23, 2008 1:36 PM
To: Kathleen Driscoll
Subject: Morado Mountain Estate and Sandhill Ridge

Dear Kathleen:

I compliment you on you honesty and decision making skills. This is a no brainer for me. We should not use tax payers money to subsidize a development by build a road that we have nothing to gain from. Please maintain this position! I will be watching for the final out come.

Sincerely,

Marc Cooke

3427 Rome Lane

Stevensville, MT 59870

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:21 PM
To: Renee Lemon
Subject: FW: Variance May 27th

From: Chris Larson [mailto:Chris@tamarackconstruction.com]
Sent: Friday, May 23, 2008 4:36 PM
To: Carlotta Grandstaff; Greg Chilcott; Alan Thompson; Kathleen Driscoll
Cc: Planning; infocul@gmail.com; Chris Larson
Subject: Variance May 27th

Dear Ravalli County Commissioners:
I am writing to support the variance request before you on May 27th.

Eight Mile Road is in the worst condition I have ever seen it; the pot holes are beginning to connect to each other & create trenches. I understand that Ravalli County has no intention to truly fix the road, just fill pot holes as a temporary bandaid (until next winter). I find the condition of Eight Mile Road absolutley appalling as a tax payer.

What I find even more appalling, though, is having to write my government & beg they accept money to fix the road -weren't you elected to look out for after citizens' better interests? Better interests being a drivable road and not wrecklessly spending tax payer money with a bandaid repair which we will have to repair again, and again , and again for 4 times more money than to simply fix the road now (by passing the variance). I fully expect each of you, as commissioners, to be fiscally responsible with taxpayer money and grant the variance for Eight Mile Road.

Thank you,

Chris Larson
5401 Sapphire Ridge Road, Florence MT

273 4262

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:22 PM
To: Renee Lemon
Subject: FW: Jesse Reeves - 8 Mile Road Variance Approval

From: david boone [mailto:david@davidboone.net]
Sent: Friday, May 23, 2008 4:23 PM
To: Greg Chilcott; Kathleen Driscoll; Carlotta Grandstaff; James Rokosch; Alan Thompson
Subject: Jesse Reeves - 8 Mile Road Variance Approval

To Whom it May Concern - My name is Jesse Reeves. My wife and I are landowners in Ravalli county, and I am an independent framing contactor whose sole means of providing for my family depends on growth. I recently read an article that was published in the Ravalli Republic in regards to the proposed subdivision/road variance issue concerning the 8 mile area. I felt strongly inclined to voice my opinion on the matter.

First off, I didn't feel like the article provided all of the information necessary for citizens to make a fair and balanced choice. The article implied that the taxpayers would be paying for a new road that would solely benefit the proposed development. This is clearly not the case. The two developers have offered to pay \$600,000 of their own money to provide materials to rebuild the 3.9 stretch of county road, which is in desperate need of it. The road is currently full of potholes and it has poor drainage, which creates dangerous road conditions in the winter. It is my understanding that the county already has set aside \$300,000 of taxpayers money for patchwork and repairs that will at best last for five years. This seems like an extremely irresponsible way to manage taxpayers money, to half-heartedly repair a road and ultimately spend far more of our taxpaying dollars to never fully rebuild the road. The article was certainly misleading. In addition to the road renovation, the two developers have also proposed to build a fire station up 8 mile road which would be a huge safety benefit to all residents in the area.

I completely understand that there are always two sides to a story, but I also feel like it is the responsibility of the press to inform citizens accurately, and that it is also a responsibility of the Ravalli County Commissioners to adopt the opinion of the majority of it's county's residents, who clearly are strongly in support of the new road, who also aren't opposing the smart growth development that is being proposed.

I myself am totally against high density, poorly planned developing, but if a developer is following all of the statutes that a county has in place, and in addition is offering to improve the community, this seems a positive situation all the way around. It is my understanding that the proposed development would include open land and well thought out recreation trails that would access public land, and that the development would consist of 1 house per 2 acres, which is in accordance with the recently passed legislation.

In summary, I would request that you sincerely consider the opinion of your community, myself included, and vote to grant this road variance which would allow the two developers to fix the road, provide jobs for the region, and ultimately provide a healthy example of smart growth in Ravalli County.

5/27/2008

Sincerely,

Jesse Reeves
(406) 546-5080

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:22 PM
To: Renee Lemon
Subject: FW: 8 Mile Variance

From: David Parsons [mailto:dparsons.mt@gmail.com]
Sent: Friday, May 23, 2008 8:33 PM
To: Carlotta Grandstaff; James Rokosch; gchilcott@ravallicounty.com; Kathleen Driscoll; Alan Thompson
Subject: 8 Mile Variance

County Commissioners; I want to express my concern and opposition to the variance that has been requested for the road project to support the Morado Mountain and Sand Hill Ridge subdivisions. I do not think it is at all wise to piecemeal development of that size in such a portion of the county that is both remote from services (fire, police, ambulance, shopping, education - all requiring many road miles to access) and where a number of other subdivisions are also in various stages of being proposed. We must find a way to evaluate the cumulative effects of such proposals and not treat each one individually. And, in this case, I'm particularly concerned about the commitment of county funds to support the road upkeep and other services that this would make, both in the short term and in the long term. I urge you to support the Planning Board's recommendation to deny the variance that has been requested.

David Parsons
5710 Yarrow Rd
Florence, MT

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:23 PM
To: Renee Lemon
Subject: FW: EIGHTMILE ROAD HEARING

From: Dave Hurtt [mailto:bigdave@montana.com]
Sent: Friday, May 23, 2008 10:31 PM
To: Alan Thompson
Cc: cgranstaff@ravallicounty.mt.gov; Kathleen Driscoll
Subject: FW: EIGHTMILE ROAD HEARING

From: Dave Hurtt [mailto:bigdave@montana.com]
Sent: Friday, May 23, 2008 1:01 PM
To: 'Greg Chilcott'
Subject: EIGHTMILE ROAD HEARING

TO RAVALLI COUNTY COMMISSIONERS
COMMENTS ON 8 MILE ROAD
23 MAY 2008

GREETINGS:

1. I UNDERSTAND THAT TWO DEVELOPERS HAVE OFFERED A TOTAL OF \$600,000 FOR THE REPAIR OF 8 MILE ROAD.
2. I HAVE HEARD, BUT DO NOT KNOW FOR A FACT, THAT THERE IS A QUESTION OF ADEQUATE RIGHT OF WAY.
3. I HAVE MEASURED BETWEEN THE WHITE LINES ALONG 8 MILE ROAD AND OF THE EASTSIDE HIGHWAY AT MILE MARKER 10, AND BOTH ARE 22 FEET.
4. I UNDERSTAND THAT THE EASTSIDE HIGHWAY IS A STATE HIGHWAY.
5. I UNDERSTAND THAT THE 8 MILE ROAD IS A COUNTY ROAD.
6. THEREFORE, IT SEEMS TO ME THAT ANY ARGUMENT USED TO STOP OR DELAY THE IMPROVEMENT OF THE 8 MILE ROAD, USING THE NEED FOR EXTRA RIGHT OF WAY, IS INVALID.
7. WHY WOULD A COUNTY ROAD HAVE TO HAVE MORE WIDTH THAN A STATE HIGHWAY?
8. WITH THE SHORTAGE OF FUNDS WITHIN RAVALLI COUNTY, FOR THE DEPARTMENTS OF ROAD AND LAW ENFORCEMENT (AS WELL AS OTHERS) IT SEEMS FOOLISH NOT TO TAKE ADVANTAGE OF THE OFFER OF \$600,000 FROM THE PRIVATE SECTOR, AND THUS EASE FURTHER TAX BURDEN ON THE CITIZENS OF THE COUNTY.
9. \$600,000 FROM AN OUTSIDE SOURCE SHOULD TAKE A BIT OF STRAIN AWAY FROM THE COMMISSIONERS AS THEY STRUGGLE WITH THE

BUDGET.

- 10. PLEASE MAKE A SENSIBLE DECISION TO ACCEPT THESE FUNDS FOR THE USE THEY ARE INTENDED.**
- 11. IF THE COMMISSION REJECTS THE OFFER, A STATEMENT, FROM THE COMMISSIONERS OFFICE, TO THE PUBLIC, VIA PRINT AND TELEVISION MEDIA NEEDS TO BE FORTHCOMING WITH REASONS FOR THAT DECISION.**

Thank you,

David S. Hurtt
Florence

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:25 PM
To: Renee Lemon
Subject: FW: Eightmile Road

From: Joanne Moore [mailto:jomoore51@yahoo.com]
Sent: Saturday, May 24, 2008 7:32 PM
To: Alan Thompson; Carlotta Grandstaff; Greg Chilcott; James Rokosch; kdriscoll@ravalli.mt.gov
Subject: Eightmile Road

The county need to fix eightmile road. Its to the point were some people are going to be in an accident and get killed. I've lived up eightmile and work there for the last 48 years, something needs done now.

Glen Mikesell

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:31 PM
To: Renee Lemon
Subject: FW: Eight Mile Road Variance

Importance: High

-----Original Message-----

From: gwennis@sofast.net [mailto:gwennis@sofast.net]
Sent: Sunday, May 25, 2008 9:17 PM
To: Greg Chilcott; Kathleen Driscoll; Carlotta Grandstaff; James Rokosch; Alan Thompson
Cc: gwennis@sofast.net
Subject: Eight Mile Road Variance
Importance: High

Dear Commissioners,

Due to prior commitments, I am unable to attend your meeting scheduled for Tuesday, May 27th. I appreciate the opportunity for my thoughts to be voiced even in my absence.

I am writing to request your support for the variance currently under consideration for the Morado Mountain Estates and Sandhill Ridge developments.

As you consider how you will vote, it is important for you to remember your responsibility to the taxpayers that elected you. Your purpose in all decisions should not be agenda driven, but how best to serve the public that elected you.

After careful examination both David Onstad and the planning department have recommended approval of this variance. I suspect their decisions include using the developers \$600,000 as the most logical, fiscally responsible, common sense solution for Eight Mile Road that has the added benefit of an estimated 20 year road life. The county I understand, plans to spend approximately \$300,000 this year with or without the developers capital investment. If that cost is \$300,000 now, imagine what that cost will be when it has to be redone as per the county road departments projections 5, 10 and 15 years from now. A negative vote on this variance will saddle the Ravalli County Taxpayers with all of these costs.

If the county has a definitive plan which is more sensible, now is the time to unveil that plan.

If the county has money in the form of a war chest or federal dollars that is waiting to be spent on Eight Mile Road, now would be the time to share that information.

If as commissioners you can explain why a 5 year patch is a more suitable solution than a 20 year fix at the same cost to the taxpayers, please do so.

If you can explain to your constituents why it is rational to spend additional taxpayer dollars 5, 10 and 15 years from now instead of a more comprehensive, long term solution that has less taxpayer consequences, then please do so.

In closing I would ask you not to sacrifice your constituents tax dollars on the altar of your own agenda when there is a perfectly valid plan on the table.

Thank you for your consideration.

Sincerely,

Dennis Schneiter

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:32 PM
To: Renee Lemon
Subject: FW: developers variance

From: carole koval [mailto:ckdk@bitterroot.net]
Sent: Sunday, May 25, 2008 9:27 PM
To: James Rokosch; Carlotta Grandstaff; Greg Chilcott; Kathleen Driscoll; Alan Thompson
Subject: developers variance

Be advised that we are definitely against the developer's variance proposal. We do not want to pay this bill to pave their roads.

Sincerely,
Donald M. Koval
Carole L. Koval
382 Sunrise Ave.
Stevensville, MT 59870

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:34 PM
To: Renee Lemon
Subject: FW: What an offer!

-----Original Message-----

From: Dallas Erickson [mailto:Dallas@accessmtwildblue.com]
Sent: Thursday, May 22, 2008 4:19 PM
To: Alan Thompson; James Rokosch; Carlotta Grandstaff; Kathleen Driscoll; Greg Chilcott
Subject: What an offer!

Dear Commissioners,

We are writing to ask you not to be stupid and turn down the offer of the developers to upgrade a road that will cost nearly a million dollars for the county to do.

This is not required by the law for the developers to do so why not take this opportunity that will relieve the County of most of that great expense. These voices against this are the ones that want NO ONE to move into the valley and into the Eight Mile area.

Their attitude is that it is terrible that developers would actually build homes for FAMILIES to live in. They make that look EVIL. What an opportunity to allow families to move in, pay more taxes to support the county and state and to, at the same time, upgrade the road which will benefit many other families and the county.

Families aren't bad and these people who want people to stop moving in here are totally misguided. They WILL move in. The question is are we smart enough to see the advantages of people moving in and making the best of it.

Thank you.

Dallas & Jenny Erickson
4479 Store Lane
Stevensville MT 59870
406 777 5862
montanahome@accessmtwildblue.com

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:35 PM
To: Renee Lemon
Subject: FW: 8-Mile road proposal

From: Jim Knapp [mailto:jknapp@corvallisfire.com]
Sent: Monday, May 26, 2008 6:25 PM
To: James Rokosch; Carlotta Grandstaff; Alan Thompson; Greg Chilcott; Kathleen Driscoll
Subject: 8-Mile road proposal

TO: Ravalli County Commissioners

From: Jim Knapp

I have been observing the actions of the board of county commissioners and following your views on growth since the election. After being in attendance for multiple subdivision reviews, I have concluded that the three new commissioners seem to be against subdivision in a general sense. I saw the eight mile road variance hearing and was repulsed by the actions of our new commissioners. Your own road supervisor stated that the road needs fixed this year, and it will cost the taxpayers approximately \$300,000; and if the variance is approved, the county share will be approximately \$276,000. For less money we will get a far superior road and this will be a much needed fix. I saw a flood of folks from the area that begged you to approve the variance, your own legal staff said take the deal, and your planning staff suggested approval. Carlotta opened the meeeting speaking for the many people in opposition of the variance and has stated that the phones are ringing off the hook with opposition. The only thing I observed was a minimum of 90% of the public comment was strongly in favor of the variance. Many roads in this county have less than the 60 foot easement and are very safe roads. I would strongly suggest that we worry about bike paths some time after you can provide quality roads in this county. The new commissioners ran on a "quality of life" format and you have a responsibility to the public to do what makes us all safer and to find solutions that make good economic sense. I just saw the 5:30pm news where Carlotta told the media about a supposed large group of people opposing this variance. Carlotta, it is your job to represent the public, not just the part that agrees with your personal views which are anti-growth. Maybe you should mention that the majority of your public comment was in favor of the variance. This is a decision where you have an opportunity to do what is best for the county and put your personal agendas aside. Please approve the eight mile variance.

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:36 PM
To: Renee Lemon
Subject: FW: road variance

From: BRLFuller@aol.com [mailto:BRLFuller@aol.com]
Sent: Monday, May 26, 2008 5:57 PM
To: Jrokosh@ravallicounty.mt.gov; Carlotta Grandstaff; Greg Chilcott; Kathleen Driscoll; Alan Thompson
Subject: road variance

I am writing to voice my opinion AGAINST the consideration of a road variance for the two new subdivisions. This county doesn't have enough money to maintain the roads it already has and to consider handing over \$300,000 for homes YET TO BE BUILT is not acceptable. The county needs to use that money to improve the roads that are already here and we should not cater to developers.

Keep up the good work on the countywide zoning....that is what we need here.

Ronna Fuller Lone Rock Area

Get trade secrets for amazing burgers. [Watch "Cooking with Tyler Florence" on AOL Food.](#)

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:36 PM
To: Renee Lemon
Subject: FW: road variance

-----Original Message-----

From: Steven Levine [mailto:chinabox@earthlink.net]
Sent: Monday, May 26, 2008 3:54 PM
To: Kathleen Driscoll
Subject: road variance

Dear Commissioner Driscoll:

We write to express our opposition to granting a road variance to the developers of Morado Mountain and Sandy Hill Ridge. The expenditure of taxpayers' funds is unjustified in light of other pressing needs in our county.

Sincerely,
Steven and Madeline Levine
325 St Mary Drive
Stevensville

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:37 PM
To: Renee Lemon
Subject: FW: variance meeting 5-28

From: carol parker [mailto:cparkermt@gmail.com]
Sent: Monday, May 26, 2008 3:38 PM
To: Kathleen Driscoll
Subject: variance meeting 5-28

Regarding: Morado Mountain and Sand Hill Ridge

Please do not spend taxpayer's money (\$300K) for helping developers overload our county services. It is a bad idea which only benefits the developer.

Jerry and Carol Parker

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:37 PM
To: Renee Lemon
Subject: FW: Eight Mile Road Variance

From: Karin Larson [mailto:Karin@tamarackconstruction.com]
Sent: Monday, May 26, 2008 3:14 PM
To: Carlotta Grandstaff; James Rokosch; Greg Chillcott; Alan Thompson; Kathleen Driscoll
Cc: Planning; infocus@gmail.com; mdasilva@keci.com; Karin Larson
Subject: Eight Mile Road Variance

Dear Commissioners:

I am very disturbed at Carlotta Grandstaff's blatant misrepresentation of *All* of the citizens of Ravalli County. Ms. Grandstaff appeared on the television news Friday night announcing that her phone has been ringing off the hook & she has been flooded with emails from citizens who do not approve of the variance for Eight Mile Road.

Do the citizens of Ravalli County, who have publicly spoken at the variance meeting held May 6th, & have called and emailed approval of the variance for Eight mile Road, not count? What reason could you, Ms. Grandstaff, have to publicly ignore all of the Ravalli County citizens who have expressed their approval of the variance to the commissioners? Ms. Grandstaff would have been fair to also acknowledge those in favor of the variance and subdivisions, but instead, she focused exclusively on the comments of disapproval for the variance. Ms. Grandstaff's remark to the television reporter implied that no citizens approved of the variance, which simply is not true.

I went out on Saturday morning to ask my neighbors on Eight Mile Road of their opinions of the variance for Eight Mile Road. Myself and 12 others from this area went door to door to inform our neighbors of the variance & proposed subdivisions. I gave all of the facts – I didn't mislead people & leave out information; I was honest. The overwhelming feedback from the residents who live up Eight Mile Road about the variance and the subdivisions (Morado Estates & Sandhill Ridge) was **approval of the variance** - contrary to Ms. Grandstaff's public sweeping generalization of disapproval. Myself, personally, visited with 25 homes. Of those 25 homes, 22 approved of the variance & subdivisions and 3 disapproved. The reasons for the disapproval were the same – the 3 residents did not trust that Ravalli County government would follow through with actually paving the road, and one man didn't like subdivisions of any sort, anywhere. All of the other volunteers, who canvassed the Eight Mile area knocking on doors & reporting the truth about the variance, had very similar results – overwhelmingly positive support for the variance & subdivisions. Each volunteer covered about the same number of houses as me. I have reported in this email the facts, both of approval & disapproval, because it is only fair to include all of the information, not just the side for which I

am trying to support.

Ms. Grandstaff remarked at the last meeting on May 6th "what about all of the other residents of Eight Mile Road" referring to the possible injustice of those who did not show up or email their opinions on the variance. Here is the data collected by residents of Eight Mile area: the residence of Eight Mile approve of the variance because we are tired of Ravalli County collecting our taxes and not fixing Eight Mile Road.

Lastly, kudos to David Onstadt , Renee Lemon & George Corn for creatively trying solve the Eight Mile Road pavement problem. I hope that the Board of Commissioners follow suite with using tax payer money wisely and listening to the residents who will be directly affected by improvements to Eight Mile Road.

Thank You,

Karin Larson
Florence, MT 59833

273-4262

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:38 PM
To: Renee Lemon
Subject: FW: (no subject)

From: mikejudeh@aol.com [mailto:mikejudeh@aol.com]
Sent: Monday, May 26, 2008 2:26 PM
To: jrokosh@ravallicounty.mt.gov; Carlotta Grandstaff; Greg Chilcott; Kathleen Driscoll; Alan Thompson
Subject: (no subject)

Dear Commissioners: We are writing to express our distaste for this deal that the developers of the two subdivisions in Florence want to swing with the county. As we understand it the county will have to spend \$300,000 even if they don't join with the developers of the Morado and Sand Hill subdivisions, but to basically take one-third of their costs for the road and pass it on to us taxpayers is not what we wanted to hear. I think that it's time the developers start paying for their own improvements, the taxpayers of the county don't need to be subsidizing them so they can have higher profits.

And along the same line when our you folks going to get something concrete going on zoning and the right to farm? Without zoning all we are going to have is a hodgepodge of developments with no rhyme or reason. And this is a valley of limited space and resources and to keep building the way we are we are going to have overcrowded roads, schools, an overtaxed police, fire department and other emergency services. There are at least three major subdivisions in the Hamilton are alone that will add another 1,000 plus houses here, an additional 2,000 more autos in town and more of a strain on our infrastructure. Without zoning we are asking for trouble with increased crime, pollution, overcrowded schools and a deteriorating quality of life here in the valley. There was a growth plan developed a couple of years ago that the then commissioners pretty much gutted after many people had worked through, as diverse views were assimilated into this plan. It's still out there and should be revisited. We need a plan for the future, now. Thank you for your time.

Sincerely, Mike and Judith Lulay

Get trade secrets for amazing burgers. [Watch "Cooking with Tyler Florence" on AOL Food.](#)

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:39 PM
To: Renee Lemon
Subject: FW: Use of Taxpayers Dollars

From: Jayne Brindle [mailto:jmb@cybernet1.com]
Sent: Monday, May 26, 2008 9:17 AM
To: Kathleen Driscoll; James Rokosch; Greg Chilcott; Carlotta Grandstaff; Alan Thompson
Subject: Use of Taxpayers Dollars

Via this email I am stating my position that the use of \$300,000 in taxpayer money to pave county roads to benefit subdivision developers is totally inappropriate. NO to the use of taxpayer funds. NO to the granting of developers' variance proposals.

Thank you.

Jayne Brindle
483 Gold Creek Loop
Hamilton

Renee Lemon

From: Kathleen Driscoll
Sent: Monday, May 26, 2008 6:39 PM
To: Renee Lemon
Subject: FW: Developers' variance proposal

-----Original Message-----

From: sgarity@xmission.com [mailto:sgarity@xmission.com]
Sent: Monday, May 26, 2008 8:29 AM
To: Kathleen Driscoll
Subject: Developers' variance proposal

Commissioner Driscoll,
I strongly oppose the developers' variance proposal. The developers should be responsible for the issues involved with their business.
This burden should not be the responsibility of the tax payer.
This is such an important issue for me that I definitely would not cast my vote for a commissioner supporting this proposal.
Thank you for your time.
Sandra Garity

Renee Lemon

From: Kathleen Driscoll
Sent: Tuesday, May 27, 2008 8:33 AM
To: Renee Lemon
Subject: Opposed to Variance on Eight mile phone calls

Telephone calls Opposed to Variance on Eight Mile:

Gayle Roth McCarthy Loop 363-7026
Grace Wilson wants a strong stand against it as a County Residence
Darrel Binkerd
Pam Merwin
Tim Bilby and Wife

They all stated they are County Taxpayers.

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Tuesday, May 27, 2008 8:33 AM
To: Renee Lemon
Subject: FW: Thanks for not supporting the Developers Road

From: Rick Burrows [mailto:rb_ranch@dishmail.net]
Sent: Monday, May 26, 2008 8:32 PM
To: Kathleen Driscoll
Subject: Thanks for not supporting the Developers Road

Ms. Driscoll,

Thanks for not supporting this absurd proposition. We don't pay our taxes to line the pockets of developers!

Rick Burrows

5/27/2008

Renee Lemon

From: Kathleen Driscoll
Sent: Tuesday, May 27, 2008 8:34 AM
To: Renee Lemon
Subject: FW: Eight Mile Road

From: Matt Weber [mailto:webdog@cybernet1.com]
Sent: Tuesday, May 27, 2008 12:42 AM
To: Greg Chilcott; Alan Thompson; James Rokosch; egrandstaff@ravallicounty.mt.gov; Kathleen Driscoll
Subject: Eight Mile Road


Dear Commissioners,

Our names are Matt & Marti Weber we live in Florence. We have four boys- Gavin 10, Cameron 8, Evan 6 & Dylan 4. As a family we are proud to be members of this community. Unfortunately we are unable to attend the scheduled meeting to address the Sandhill Ridge and Morado Mountain subdivisions. That being said we would like our voices to be heard in regards to the variance currently under consideration for these projects. We ask you to vote in favor of these projects. We feel that they will bring a significant public benefit and should be allowed.

Thank You-
The Weber Family

5/27/2008

Beth Perkins

 **n:** George Corn
Sent: Sunday, May 25, 2008 3:52 PM
To: bvancanagan@dmllaw.com
Cc: Commissioners Department
Subject: FW: communication to RCAO

Dear Bill,

I am concerned about the various methods of communication being used to send correspondence to the Ravalli County Attorney's Office. This concern was highlighted Friday by communications sent from your office to mine regarding the upcoming variance hearings for Morado Mountain Estates and Sandhill Ridge Subdivision scheduled for Tuesday, May 27, 2008.

On Friday afternoon, May 23rd (the afternoon before the 3-day Memorial Day weekend), you sent several communications to my office on the above matters. One letter was sent to my attention at 2:15 pm via facsimile and regular mail. A second and different correspondence was sent via email to Karen Mahar shortly thereafter. I realize these letters addressed different matters; however, the Ravalli County Attorney's Office is one unified office with a centralized mail sorting system and all future correspondence to our office should be sent according to the procedure outlined below.

I leave aside the troubling question of receiving these communications on the eve of the hearing but please note that future correspondence to my office should be sent via regular mail to the Ravalli County Attorney's Office, Ravalli County Courthouse, Suite C, Hamilton, MT 59840. If urgent (and hopefully this will be the exception rather than the rule), correspondence can be faxed to (406) 375-6731. If the correspondence deals with a pending civil matter, such correspondence should be directed to the attention of Deputy Karen Mahar, unless arranged otherwise with me on a specific matter. Similarly, all incoming phone calls should be directed to our main number of (406) 375-6750; not to the direct extensions of individual attorneys.

It has come to my attention through these latest communications that in the recent past you have been sending communications to various deputies via email or calling direct extensions henceforth, please be advised that my office cannot routinely accept correspondence from opposing counsel on pending matters directly to the attorneys. In fact, this has been my office policy for some years. I established it to help manage the overwhelming flow of communications into my office, as well as to maintain the integrity of my phone message and filing system.

Further, I am sure you understand that each deputy in my office has an extremely busy schedule and relies on secretarial assistance to properly route and prioritize communications to our office. To ensure that there is no more confusion on this issue, any correspondence sent via email directly to my deputies without specific permission to do so will be automatically deleted and not read.

I very much appreciate your attention to this issue.

Sincerely,

George H. Corn



5/27/2008

Datsopoulos, MacDonald & Lind, P.C.

Attorneys at Law

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* Also admitted in Massachusetts

May 23, 2008

**VIA FACSIMILE [375-6731] and Regular
First Class Mail**

Mr. George Corn, Esq.
Ravalli County Deputy Attorney
Ravalli County Courthouse
205 Bedford, Suite C
Hamilton, Montana 59840-2853

**Via Facsimile [375-6507] and Regular First
Class Mail**

Ravalli County Board of County
Commissioners
215 S. 4th Street, Suite A
Hamilton, Montana 59840

Re: Morado Mountain Estates Variance
Our File No.: 19793.001

Dear Mr. George Corn and the Ravalli County Board of County Commissioners:

The purpose of this correspondence is twofold. First, it is necessary to respond further to questions recently directed at Mr. Ohnstad and Matt Ulberg, and second, to set forth additional enhancements generously proposed by Ms. Dykeman and Mr. Wilson.

Given the scope and legal character of many of the questions posed to the applicant, I thought it best to address this correspondence to both Mr. Corn and the Commissioners.

With respect to the Commission's numerous inquiries relating to Eastside Highway, its maintenance and traffic volume, I remind the Commission that such data is not an applicant's responsibility to submit under the Montana Subdivision and Platting Act or the Ravalli County Subdivision Regulations (the "Regulations"). Specifically, § 76-3-504 MCA does not contemplate that subdivision applicants would be responsible for state highways in any fashion, whether by way of submitting information or contributions for improvements. No provision of the Regulations requires any applicant to submit traffic analyses related to state highways, and certainly no provision of the MPSA authorizes the any county to demand mitigation from an applicant for non-county impacts.

Accordingly, where the Regulations address traffic analysis at all, it is in the form of a traffic impact analysis, required in certain circumstances under 3-1-5(xxxvi)(A)(1) which states:

"A traffic impact analysis, as described in this section, shall be prepared and submitted along with the preliminary plat application when the

Datsopoulos, MacDonald & Lind, P.C.

Attorneys at Law

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Dennis E. Lind
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Peter F. Lacny
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Joslin E. Monahan

* Also admitted in New Mexico & Texas
+ Also admitted in Washington
^ Also admitted in Massachusetts

FACSIMILE TRANSMITTAL May 23, 2008

To: Ravalli County Board of County Commissioners
Fax Number: 375-6507
From: Katy Hartney, Legal Assistant to William K. VanCanagan, Esq. *YSH*
Re: Morado Mountain Estates Variance
File No. 19793.001

We are transmitting 5 page(s), including this page. If you do not receive all of the pages, please contact Katy immediately at (406) 728-0810. An original:

- ☐ Will not follow
- ☒ Will follow by Mail
- ☐ Will follow by overnight courier
- ☐ Will be hand delivered

Message: Ravalli County Board of County Commissioners~
Please find attached correspondence of today's date from Mr. VanCanagan regarding Morado Mountain Estates Variance.
Thank you.

The pages comprising this facsimile transmission from Datsopoulos MacDonald & Lind, P.C. contain confidential information and also may be legally privileged as an attorney-client communication. This information is intended solely for use by the individual or entity named as recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

Datsopoulos, MacDonald & Lind, P.C.

Mr. George Corn, Esq.
Ravalli County Board of County Commissioners
May 23, 2008
Page 2 of 4

proposed development of six or more lots, as identified in the subdivision plat, has the potential to generate greater than 25% of the current traffic volume on any county-maintained road(s), or changes in the functional classification of any road, utilized for access to the subdivision." Emphasis added.

Thus the plain language of the Regulations contemplates further traffic analysis when there is a certain threshold impact to county roads. This is proper since the Commission's domain is Ravalli County, not the State of Montana. In this case, the County expert, Mr. Ohnstad explained why a traffic impact analysis of Eight Mile Creek Road was not warranted. As stated above, the County has no authority to require analysis of state highways from local subdivision applicants.

Nonetheless, the applicants are willing to respond as best they can to the Commissioners' questions because the County Road and Bridge Department, Planning Department, and Attorneys Office have worked diligently and in good faith to reach this creative, collaborative solution to a County road in severe disrepair.

Next, the Commission's question which asked, "What liability does the county incur for granting a variance for safety features/standards below what is called for in our subdivision regulations?" indicates that the Commission woefully misconceives the nature of the variance request as well as the scheme of the AASHTO Guidelines.

By way of further explanation, the Regulations require the applicants to bring Eight Mile Creek Road "to county standards for new construction." 5-4-5(b). Ravalli County relies on the AASHTO Guidelines so the variance request is simply to adhere to the AASHTO guideline for existing construction rather than new construction. In other words, standards for both "new" and "existing" construction are by definition and necessarily fully AASHTO compliant and as such neither poses a safety risk.

As Mr. Ulberg explained, AASHTO does not require application of "new" construction standards when existing roads are being improved. Quite the contrary, AASHTO specifically states that improvements and repairs to existing roads should adhere to the AASHTO guidelines for "existing" roads.

That is precisely why Mr. Ohnstad explained numerous times that the word "new" should not have been used in the Regulations.

In summary, while if granted the improvements will vary from the Regulations since the improvements will be at the "existing construction" standard rather than the "new construction" standard, that difference is not one of safety. AASHTO contains design standards, all of which account for safety. The "new" standard is meant to apply to new roads, and the "existing" standard is meant to apply to existing roads. Quite reasonably then, the applicants have requested to improve an existing road to AASHTO standards for existing roads.

Again, it cannot be over emphasized that the difference between the Regulations and the variance request is the difference between "new" and "existing" AASHTO designs, and the

Datsopoulos, MacDonald & Lind, P.C.

Mr. George Corn, Esq.
Ravalli County Board of County Commissioners
May 23, 2008
Page 3 of 4

difference between new and existing AASHTO designs relates to the kind of road, not to the relative safety of the respective standards.

Furthermore, the County's potential liability in this matter will not result from the granting of the variance but from its failure to grant the variance. There was uncontroverted testimony from residents along Eight Mile Creek Road and from the County that the road's condition is a threat to public safety. There was also testimony that the County would not undertake an improvement as significant or as long-lasting as that proposed by Ms. Dykeman and Mr. Wilson.

As you know, the County's broad authority granted to it according to its police power demands that the county act to ensure the safety, health, and welfare of the citizens of Ravalli County. If the County nonetheless construes its own Regulations to disserve the public welfare, that decision is certain to be viewed as arbitrary, irrational, and ultra vires its authority. To the extent that the Commissioners knowingly refuse improvements that exceed the scope and character of any improvement the County could implement, the County's irrational refusal increases its legal exposure.

Finally, after reflecting on the comments and concerns of the Commissioners, the applicants decided to offer the following further mitigation or enhancements:


1. To forego any pro rata reimbursement;
2. To waive right to protest an RSID for future development;
3. To install stop signs on the 14 private cross streets intersecting Eight Mile Creek Road; and,
4. To install warning signs along Eight Mile Creek Road warning motorists to watch for pedestrians.

As my clients and various Departments within Ravalli County have expended significant time and resources crafting this advantageous solution to the bad conditions on Eight Mile Creek Road, I look forward to your continued good faith cooperation and impartial review of the applications.

If you have any questions or desire any further information, please do not hesitate to contact me.

Sincerely,

DATSOPOULOS, MacDONALD & LIND, P.C.



William K. VanCanagan, Esq.

Datsopoulos, MacDonald & Lind, P.C.

Mr. George Corn, Esq.
Ravalli County Board of County Commissioners
May 23, 2008
Page 4 of 4

WKV/jem/ksh

cc: Ms. Karen Hughes, Director (Via e-mail)
Ms. Stacey Dykeman (Via e-mail)
Mr. Terry Forest (Via e-mail)
Ms. Joslin Monahan (Via e-mail)

\\Dykeman, Stacey 19793\Morado Mountain Estates Subdivision 001\Correspondence\BCC ltr 052208.doc